

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER
)	
)	
IN THE MATTER OF:)	DETERMINATION
)	AND CANCELLATION OF AWARD
)	
)	
DEPARTMENT OF NATURAL)	
RESOURCES)	
)	POSTING DATE:
)	APRIL 1, 2010
)	
IFB No. 5400001467)	MAILING DATE:
HAUL & PAINT STEEL PUSHBOAT)	APRIL 1, 2010
& FLAT BARGE)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a request to cancel a contract after award, but prior to performance from the Department of Natural Resources (DNR) in accordance with S.C. Reg. 19-445-2085(C). In its request, DNR advised the CPO that it had sought bids to haul and paint a steel pushboat and a flat barge. After receiving bids, DNR reviewed the single bid it received from Rockville Marine (Rockville) for \$15,269.79, found it responsive and issued Rockville the award. Once the award was announced, another bidder, Pierside Boatworks (Pierside) complained to the CPO that Pierside, not Rockville, offered the lowest bid.

On February 23, 2010, John Brophy, President, Pierside Boatworks Inc., wrote, in part, in an email to the CPO:

I am writing regarding Bid Number 5500007742. We submitted the lowest bid for this job but we were not awarded the job due to a technicality. Although we do

work the marine repair work for the Federal Government, including Coast Guard, Army Corp of Engineers, US Navy, FLETC, Charleston County Sheriff, and local law enforcement agencies, this is the first time we have submitted an on-line bid for the state.

My office manager submitted the bid exactly how she was told to do so by your help desk. The actual written bids were attached to the on-line bid. I am told that the Total Value (Net) line was not filled in electronically and we were not instructed to do so. Also I am very surprised that a bid could possibly be awarded without looking at the actual written bid details. We were in fact the lowest bid electronically. I would not feel comfortable winning a bid on a technicality nor am I comfortable losing a bid on a technicality.

We were the only bidder to actually go and look at the vessel at Bowens Island so I have some real time and cost invested. We were the ones who found the problem with the bid missing the hull paint. We submitted the lowest bid, our electronic Total Value (Net) was in fact the lowest. We are highly qualified to do the work. If the bid is not awarded to the lowest qualified bidder, can you please explain the qualification process to me?

DNR investigated the matter. Jessica Monts, DNR Procurement Services, forwarded the following account, in relevant part, to the CPO in an email, on February 10, 2010:

I had two bidders for this solicitation, Pierside Boatworks and Rockville Marine. Rockville Marine submitted a paper copy of the bid as they were waiting for their supplier status in SRM. Pierside Boatworks submitted their bid through SRM. When evaluating the solicitation I tabulated that Pierside Boatworks price was \$0.00. They did not submit pricing on the line item. Rockville Marine bid \$15,269.79. . . I awarded this project to Rockville Marine as Pierside Boatworks was un-responsive. Yesterday, I was contacted by Jessica Jacobs with Pierside because she did not understand why Pierside was not awarded the bid. I explained to her that they did not submit a price for the project, in turn she told me that they attached an excel spread sheet (attachment "Copy of SC DNR") to the online

solicitation stating their price for the project. She also stated that the SCEIS helpdesk walked her through the online submittal process and told her that attaching the excel spread sheet was sufficient for pricing submittal.

I have notified Rockville Marine that a situation has occurred with this solicitation and that it is at the Materials Management Office for review. I also told them not to procure any services or supplies in preparation for this project until the situation is resolved.

On February 24, 2010, Ms. Monts asked the CPO to cancel the award to Rockville. The CPO requested additional information from DNR, which was submitted on March 25, 2010.

CPO FINDINGS

After conducting an administrative review, the CPO finds the following facts to have occurred.

Pierside submitted its bid electronically in the state's new automated procurement system. The South Carolina Enterprise Information System (SCEIS) provides for electronic submittal of bids. However, instead of entering its bid amount into the system, Pierside attached its bid to its submittal causing the system to not recognize the bid amount.

When DNR opened the bids received, the system recognized that Pierside had submitted a bid, but entered Pierside's bid as zero. DNR did not note the bid attached to Pierside's submittal. DNR issued an award to Rockville leading Pierside to inquire with DNR and then the CPO regarding the propriety of DNR's award. DNR investigated the matter, discovered the bid from Pierside in the SCEIS system and informed the CPO. DNR assures the CPO that Pierside's bid was received prior to the bid opening. DNR has

evaluated Pierside's bid and determined it both responsive and responsible. Consequently, DNR requests cancellation of the award to Rockville.

The following facts are relevant to the matter before the CPO:

1. On January 7, 2010, DNR issued its solicitation.
2. On January 19, 2010, DNR conducted a site visit.
3. On February 1, 2010, DNR opened bids recording one bid from Rockville for \$15,269.79.
4. On February 5, 2010, DNR posted a statement of award to Rockville.
5. On February 10, 2010, Jessica Monts, DNR Procurement Services, first advised the CPO of this situation.
6. On February 19, 2010, John Brophy, President of Pierside, made formal inquiry with DNR about the award to Rockville.
7. On February 22, 2010, Jessica Monts, DNR Procurement Services, referred Mr. Brophy to the CPO.
8. On February 23, 2010, Mr. Brophy of Pierside inquired with the CPO forwarding the letter quoted above.
9. February 24, 2010, DNR asked the CPO to cancel the award to Rockville prior to performance citing an administrative error. The CPO made certain inquiries with DNR.
11. On March 25, 2010, DNR provided all requested information to the CPO.

DETERMINATION

After award but before performance, upon a written determination by the appropriate chief procurement officer (CPO) that under the facts cancellation of award is clearly in the best interest of the State, an award may be cancelled prior to performance. SC Code Ann § 11-35-1520(7); SC Regulation 19-445.2085(A) and (C)(8).

Section 11-35-1520(7) states in part that:

Except as otherwise provided by regulation, all decisions to permit . . . cancel(lation) of awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

SC Regulation 19-445.2085(A) and (C)(7) read, in part:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance

It is determined that an administrative error occurred in the DNR award of solicitation #5400001467, Haul & Paint Steel Pushboat & Flat Barge. DNR issued an award to Rockville, the apparent low bidder, not realizing that Pierside had timely submitted a lower bid into the SCEIS system. DNR has assured the CPO that the Pierside bid was received prior to bid opening and the Pierside bid is responsive and responsible.

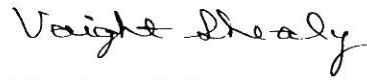
S.C. Reg. addresses the analogous situation of a bid being received in the procuring agency's mail room, but going unnoticed. It reads:

G. Exceptions to Rejection Procedures.

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening. [19-445.2070(G)]

The CPO finds that an administrative error has occurred in the award of solicitation #5400001467, Haul & Paint Steel Pushboat & Flat Barge in that the awarded

bidder, Rockville, was not the lowest bidder. Therefore, the award to Rockville is cancelled after award, but prior to performance. The procurement is remanded to DNR to award in accordance with the Consolidated Procurement Code.

A handwritten signature in cursive script, reading "Voight Shealy".

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2009 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

South Carolina Department of

Natural Resources



John E. Frampton
Director

Carole Collins
Deputy Director for
Outreach & Support Services

March 23, 2010

To: Voight Shealy, Chief Procurement Officer, SC Materials Management Office

From: Jessica Monts, Procurement Specialist, SC Department of Natural Resources

Re: Cancellation of Award for Solicitation 5400001467

In regards to SC Department of Natural Resources (SCDNR) award of Solicitation 5400001467, Haul and Paint Steel Push Boat and Flat Barge, I would like to recommend "Cancellation of Award Prior to Performance" under SC Reg. 19-445-2085(C). Please find enclosed a copy of the solicitation file, in entirety, for your reference.

The low bidder, Pierside Boatworks, was inadvertently not considered for award due to directions given by the SCEIS help desk for online bidding submittal. Pierside Boatworks submitted their bid in the timeframe required by the SCDNR but their pricing was overlooked due to instructions from the SCEIS help desk. The SCEIS helpdesk told the vendor attaching an excel spread sheet for their pricing was sufficient submittal when in fact the vendor should have entered their pricing in the online bidding schedule.

As the SCEIS system does not alter the SC Procurement Code, I have found Pieside Boatworks both responsive and responsible and would like to have this award cancelled so I can submit a new award to the correct low bidder for this solicitation.

Cc: Jamie Jackson, Procurement Manager, SCDNR
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